IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1634 of 1984

For Approval and Signature :
HONOURABLE **MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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MINOR DUNGERSINGH DALASING
THRO' GUARDIAN DALASING K - Appellant(s)
Versus
AHMEDABAD MUNICIPAL CORPN & 1 - Defendant(s)

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Appearance :
MR KH BAXI for Appellant,
MR AS ASTHAWADI for Mr PRASHANT G DESAI for Defendant(s) : 1,
NOTICE UNSERVED for Defendant(s) : 2,

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CORAM : HONOURABLE MS. JUSTICE R.M. DOSHIT
3rd October, 2007.

ORAL JUDGMENT

This Appeal preferred under Section 110 [D] of the Motor Vehicles Act, 1939 arises from the judgment

and award dated 26th July, 1982 passed by the Motor Accident Claims Tribunal, Ahmedabad in Claim Petition No. 128 of 1981.

The Appellant, then a minor boy of 15, suffered an accident while alighting from an omnibus belonging to the respondent no.1-Ahmedabad Municipal Corporation [hereinafter referred to as, "***the Corporation***"]. The appellant, through his father and guardian lodged above referred claim petition no. 128 of 1981 for compensation in the sum of Rs. 50,000/=. According to the claimant, he was little educated boy of 15 years of age. He was serving on a tea-kettle on daily wage of Rs. 4/=. On 27th May, 1981 he was travelling in the offending bus – Route No. 141 – from Satyamnagar Bus-stand, Amraivadi to Kamdar Maidan, Sarangpur. The driver did not stop the bus at the Kamdar Maidan Bus-stand. The claimant, therefore, requested to stop the bus. Instead of stopping the bus, the driver slowed down the bus at a little distance away from the bus-stop and asked the claimant to get down from the bus. In the process, the claimant suffered a fall resulting into injury on both of his legs. According to the claimant, he had

suffered fractures in the right side femur and hip bone of the left side and lacerated wounds. The claimant had to be removed to the hospital where he had to undergo two operations for fractured bones, had to suffer plaster and the treatment for broken bones for some three months. Thereafter, he had to undergo physio-therapy for another three months.

The claim was contested by the Corporation. The factum of accident was not disputed. However, according to the Corporation, it was the claimant who had been negligent in alighting from the running bus. He was, therefore, not entitled to compensation claimed for. In support of his claim, the claimant examined himself; his father; doctor who attended him in hospital, and his colleague. His colleague – Narayansinh deposed that he was serving at the same tea kettle where the claimant was serving. He too was travelling in the same bus; that the driver had not stopped at the Kamdar Maidan bus-stop. The claimant, therefore, had to alight in the middle of the road, however, before he could alight from the bus, suddenly the driver picked up the speed, on account of which, the claimant suffered the fall. The Doctor

deposed that the claimant had suffered fractures, as alleged and that he had to undergo treatment. He opined that on account of the said injuries, the claimant was left with permanent partial disability relating to right lower limb and left lower limb. He had difficulty in sitting cross-legged, squatting and in standing up. The previous disability on account of polio in the left lower limb was only marginal and the disability described was not related to polio. The Corporation examined the driver and the conductor of the offending bus. Both denied that the bus had not stopped at Kamdar Maidan bus-stand. In his cross examination, the driver Jitendra Kumar deposed that he was not sure whether the bus had stopped at Kamdar Maidan Bus-stand. He also admitted that he stopped at the bus stops wherever the conductor signaled to stop by pulling at the bell. The learned Tribunal was of the opinion that even though the bus did not stop at the Kamdar Maidan bus-stand, even though the driver might have asked the claimant to get down from the running bus in the middle of the road, the claimant ought not to have got down. Thus, in the opinion of the Tribunal, the claimant was negligent. Fifty

percent of the negligence is attributed to the claimant. As to the loss of future income, the Tribunal has held that the loss of future income would be around Rs. 50 per month and adopting the multiplier of 15, the loss of future income is computed at Rs. 9,000/=. A sum of Rs. 1,000/= has been awarded for the expenses of treatment, transport charges and loss of earning of the claimant's father. Thus, after awarding a sum of Rs. 10,000/= for pain, shock and suffering, the total compensation has been computed to be Rs. 20,000/=. Considering that the claimant was negligent, as aforesaid, the sum of Rs. 10,000/= has been awarded to the claimant.

Mr. Bakshi has submitted that the learned Tribunal has erred in considering the datum figure of Rs. 50/= per month. He has submitted that the learned Tribunal has not taken into account the inflation and the future increase in income. The negligence attributed to the claimant was also unwarranted. He has submitted that in the present Appeal, the claimant has reduced his claim to Rs. 20,000/= which is just and proper.

Mr. Asthawadi has contested the Appeal and

supported the *impugned* judgment and award.

As to the contributory negligence, I am unable to agree with the finding of the learned Tribunal. Though the driver and the conductor of the bus deposed that the bus had stopped at Kamdar Maidan bus-stand, and the driver of the bus said that some passengers had boarded from the Kamdar Maidan bus-stand, the Corporation has not produced any evidence of issuance of tickets to such passengers. In absence of cogent evidence produced by the Corporation, there is no reason not to believe the evidence of the claimant and his colleague. If the bus did not stop at the given bus stand and the passenger had to alight at some distance from the bus stand, I would hold that it was the bus driver who was negligent in not stopping the bus at the bus stand and in not allowing the passenger to alight at the bus stand. I, therefore, hold that the Corporation shall be responsible for whole of the compensation to which the claimant is entitled.

As to the datum figure, it is not disputed that the claimant was serving at a tea kettle on a daily wage of Rs. 4/=. His colleague, the aforesaid

Narainsing also deposed that he was also offered one meal. Considering daily wage of Rs.4/= and one meal, the daily income of the claimant can be fairly estimated to Rs. 12/=. It is neither disputed nor it is disputable that the claimant had to suffer treatment for three months and had to undergo physio therapy for another three months. The claimant was, therefore, entitled to compensation for loss of income for the said six months. Considering the permanent partial disability to the lower limbs suffered by him, rate of inflation and possible increase in wages, the loss of future income can safely be estimated at Rs. 100/= per month. Considering the purchase factor of 15, the loss of future income would be Rs. 18,000/=. I am, therefore, of the opinion that the claimant was entitled to a compensation of Rs. 31,000/= computed as follows :-

[a]	Pain, Shock & Suffering	Rs. 10,000/=
[b]	Loss of Income for 6 months	Rs. 2,160/=
[c]	Loss of earning capacity	Rs. 18,000/=
[d]	Treatment, Transport charges inclusive of loss of earning of the father	Rs. 1,000/=

As the claimant has restricted his claim to Rs. 20,000/=, the claimant will be entitled to an additional compensation of Rs. 20,000/= with interest @ 6% *per annum*. The Appeal is allowed in the above terms with cost. The *impugned* award dated 26th July, 1982 passed by the Motor Accident Claims Tribunal, Ahmedabad in Claim Petition No. 128 of 1981 stands modified to the above extent.

{Ms. R.M Doshit, J.}

*Prakash**